

Not for Publication

JUN 30 2003

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

STEVEN SMITH,

Defendant - Appellant.

No. 01-10460

D.C. No. CR-00-00610-PJH

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Argued and Submitted September 13, 2002
San Francisco, California

Before: **KOZINSKI** and **KLEINFELD**, Circuit Judges, and **REED,**** District Judge.

Given the parties' stipulation that the gun crossed state lines at some point before it came into Smith's possession, there was sufficient evidence for a fact-

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The Honorable Edward C. Reed, Jr., Senior United States District Judge for the District of Nevada, sitting by designation.

finder to conclude that Smith, a convicted felon, did unlawfully “possess in or affecting commerce” a firearm. 18 U.S.C. § 922(g)(1) (emphasis added).

Our precedents have repeatedly refused to read any “recency” requirement into the statute, even after the Supreme Court narrowed the reach of the Commerce Clause in United States v. Lopez, 514 U.S. 549 (1995), and United States v. Morrison, 529 U.S. 598 (2000). See, e.g., United States v. Hanna, 55 F.3d 1456, 1462 & n.2 (9th Cir. 1995) (“Congress sought to reach possessions broadly, with little concern for when the nexus with commerce occurred. . . . [A] past connection is enough. . . . We have read and considered United States v. Lopez . . . , but it does not alter our analysis.” (internal quotation marks omitted)); United States v. Casterline, 103 F.3d 76, 77 (9th Cir. 1996) (refusing to construe section 922(g) as “requiring a time of [interstate] transportation reasonably close to the charged time of possession” and reaffirming our holding, “after Lopez came down, that 18 U.S.C. § 922(g) requires only that the firearm was ‘at some time’ in interstate commerce”); United States v. Rousseau, 257 F.3d 925, 932-33 (9th Cir. 2001) (acknowledging Morrison and holding that defendant’s “arguments that . . . the district court should have instructed the jury regarding the effect on and recency of transportation in interstate commerce are . . . without merit”); see also United States v. Gonzales, 307 F.3d 906, 914 (9th Cir. 2002) (rejecting

defendant's argument that "a prosecution under 18 U.S.C. § 922(g)(1) exceeds Congress's jurisdiction under the Commerce Clause, where the only link to commerce is the fact that the firearm once crossed a state line"); United States v. Davis, 242 F.3d 1162, 1162-63 (9th Cir. 2001) (per curiam) (holding that our precedents remained unaffected by "recent Supreme Court opinions" and that "Congress did not exceed its authority under the Commerce Clause when it enacted 18 U.S.C. § 922(g)(1)").

Because the statute contains no "recency" requirement and because Smith admitted to all the elements of the crime in the stipulations, the district court did not err in denying defendant's motion for judgment of acquittal.

AFFIRMED.